

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5761 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MAHENDRAPRASAD A. SONI

Versus

STATE OF GUJARAT & OTHERS

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Appearance:

MR PV HATHI for the Petitioner

MR ND GOHIL for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/09/96

ORAL JUDGEMENT

1. The petitioner a Head Clerk of Public Works Department of the Government of Gujarat filed this writ petition before this Court and prayed therein for the direction to the respondents to fix his pay on the post of Senior Accounts Clerk on and from 1-7-1971 and to revise the pay fixation accordingly with further consequential reliefs.

2. The petitioner was recruited as clerk in the year 1954 in the Public Works Department. In January, 1958 he was promoted as Sr. clerk. He was further promoted as a Senior Accounts Clerk on 12th October, 1971. The next promotion has been given to the petitioner on the post of Head Clerk. The petitioner was a Senior Clerk in the pay scale of Rs.325-400 till 10th October, 1971. From 11th October, 1971 he was promoted on the post of Senior Accounts Clerk. The pay scale of both the posts of Sr. clerk and Sr. Accounts clerk were the same. Though both the posts were of same pay scale, but the post of Senior Accounts Clerk was treated as promotional post from Senior Clerk upto 27th September, 1973 and reference in this respect has been made to the resolution of the Public Works Department dated 15th March, 1975. The selection grade was prescribed for the said two posts at Rs.325-400 and the petitioner was given the selection grade before he was promoted from 1-7-1971 and the pay of the petitioner was fixed in the selection grade of Rs.325-400 on 1-7-1971 with the next date of increment on 1-7-1972. On promotion, the petitioner's pay was fixed at Rs.370/- on and from 12th October, 1971 with next date of increment of 12th October, 1972. All these orders have been passed by the department. On revision of the pay scale on the post of Senior Accounts Clerk under the Gujarat Civil Service Revised Pay Scale Rules, 1975, the pay of the petitioner was fixed at Rs.545/- with effect from 1st January, 1973 with the same date of increment as 12th October, 1973. The Local Funds Audit Office at Palanpur under its order dated 30th March, 1978 objected to the pay fixation of the petitioner and suggested the reduction as given out by the petitioner in para no.5 of the petition. The pay of the petitioner from 1st October, 1973 was proposed to be fixed at Rs.500/- instead of Rs.560/-. In pursuance of the aforesaid order of the Local Funds Audit Office at Palanpur, the department has passed the necessary order of the reduction of the pay of the petitioner and also prepared the recovery statement. Hence, this writ petition before this court.

3. The respondents have not filed any reply to the Special Civil Application. In the absence of the reply to the Special Civil Application the contents thereof stands uncontroverted.

4. The learned counsel for the petitioner made two fold contentions before this Court. Firstly it is contended that the respondent no.1 has failed to discharge his duty to decide the issue pending on this question of the fixation of the pay of the petitioner

since 1978 in spite of several representations of the petitioner supported by the recommendations contained in annexure 'F' and 'G' by the department to remove the anomaly in the pay fixation of the petitioner. It has next been contended that the respondents particularly, the first and second respondents have failed to appreciate that all other similarly situated employees, names of whom have been mentioned in ground C, promoted from the post of Sr. clerk to the post of Sr. Accounts Clerk were given the pay as if they were promoted and their pay was fixed accordingly. It was the only case of the petitioner who was denied the benefit right from October, 1971 resulting in his continuous loss in the emoluments of the post of Senior Accounts Clerk and consequently in higher post in view of the irregular fixation.

5. The learned counsel for the respondent on the other hand, contended that if the representations made by the petitioner have not been considered by the respondent no.1 then the respondent no.1 will consider the same and pass an appropriate order. On the merits, the learned counsel for the respondent contended that the Local Funds Audit Office has raised the objection and as such, the necessary orders for refixation of the pay of the petitioner has been made. However, the learned counsel for the respondent does not dispute that the post of Sr. Accounts Clerk was considered to be the promotional post from the post of Sr. clerk till 27th September, 1973 under the Government resolution dated 15th March, 1975.

6. I have perused the resolution annexure 'D' dated 15th March, 1975 and I find there from that after careful consideration the Government was pleased to direct that the promotion to the post of Sr. Accounts Clerk should be considered as a promotion to the higher post from Sr. Clerk upto 27th September, 1973. This decision was taken by the Government for the reason that the rules regarding the recruitment of these posts have been modified under the Government notification dated 27th September, 1973. In view of the resolution of the Government aforesaid, I find sufficient merits in the contention of the learned counsel for the petitioner that the Local Funds Audit Office has not properly and correctly appreciated the matter and the order made, in pursuance of the proposals, by the department deserves to be reconsidered. I find sufficient merits also in the contentions of the learned counsel for the petitioner that the representations which were made by the petitioner from time to time have not been considered. Once an employee makes a grievance regarding the service conditions, the same should be

considered by the employer expeditiously. The employer should not be rigid or should not make it to be a prestige issue. These matters are not res judicata or not attained the finality. These are the matters open for further consideration, reconsideration or modification on the representation made by the employee. By not considering the representations filed by the petitioner, the employee has been deprived of the benefit of the higher pay-scale etc. and secondly this omission or inaction of the respondent has given rise to this litigation which was otherwise avoidable at their ends. This court is already having mounting arrears of the cases. The other grievance which has been made by the petitioner of hostile discrimination in the matter of fixation of pay on promotion and giving the benefit of promotion etc. to the post of Sr. Accounts Clerk is also of substance. The necessary pleading has been made by the petitioner which has not been controverted by the respondents. However, I do not consider it appropriate and proper to decide on merits the contentions in view of the fact that the counsel for the State has fairly conceded that the matter will be considered by the respondent no.1 afresh.

7. Accordingly, this Special Civil Application is disposed of with the directions that the petitioner shall make a representation, if he so desires, in respect of the grievances made by him in this Special Civil Application to the respondent no.1 within a period of three months from the date of receipt of certified copy of this order. The respondent no.1 will consider the representation made by the petitioner within a period of two months on receipt thereof, if it considers necessary after giving an opportunity of hearing to the petitioner. In case the grievances made by the petitioner are accepted by the respondent no.1 then the petitioner shall be entitled for all the consequential benefits follows therefrom. In case the grievances made by the petitioner are not acceptable or any of the grievance is not accepted then the respondents may pass a reasoned order and a copy of the same may be sent to the petitioner by registered post. Rule is made absolute in the aforesaid terms with no order as to costs.

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